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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 5, 2014

Mark Aguirre, Plant Manager
Tharco Container
11600 Los Nietos Rd.
Santa Fe Springs, CA 90670

Mark Aguirre, Plant Manager
Chris Pierce, Maintenance Supervisor
Tharco Container
10810 Painter Ave.
Santa Fe Springs, CA 90670

National Registered Agents, Inc.
Agent for Service of Process - Packaging Corporation of America
818 W Seventh St.
Los Angeles, CA 90017

Mark W. Kowlzan
Chief Executive Officer
Packaging Corporation of America
1955 West Field Court
Lake Forest, IL 60045

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Mr. Aguirre, Mr. Pierce and Mr. Kowlzan:

I am writing on behalf of California Communities Against Toxics ("CCAT") with regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act") that CCAT believes are occurring at Tharco Container's two industrial facilities located at 11600 Los Nietos Rd. and 10810 Painter Ave., Santa Fe Springs, California ("Facilities"). CCAT is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCAT has members living in the community



in and adjacent to the San Gabriel River Watershed. CCAT and its members are deeply concerned with protecting the environment in and around their communities, including the San Gabriel River Watershed. This letter is being sent to you as the responsible owners, officers, or operators of the Facilities (all recipients are hereinafter collectively referred to as "THARCO").

This letter addresses THARCO's unlawful discharge of pollutants from the Facilities through the Los Angeles County municipal storm sewer system into the San Gabriel River. The Facilities are discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facilities listed on documents submitted to the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") are 4 19I015962 and 4 19I017386. The Facilities are engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facilities. Consequently, THARCO is hereby placed on formal notice by CCAT that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAT intends to file suit in federal court against THARCO under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On or before June 26, 2000, THARCO filed a Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity for the Los Nietos Rd. Facility. On or before September 18, 2012, THARCO filed another Notice of Intent for Existing Facility Operators to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity for both the Los Nietos Rd. Facility and Painter Ave. Facility (collectively "NOI"). In the NOI, THARCO certified that both the Facilities are classified under SIC Code 2653 ("Corrugated and Solid Fiber Boxes"). The Facilities collect and discharge storm water from the industrial sites into at least three (3) outfall located at the Facilities – one at the Los Nietos Rd. Facility and two at the Painter Ave. Facility. The Los Nietos Rd. facility is 5 acres and the Painter Ave. Facility is 6 acres. The Facilities are alleged to have a group monitoring plan. The outfall discharges into Los Angeles County's municipal storm sewer system which discharges into the San Gabriel River.

The Regional Board has identified beneficial uses of the San Gabriel River Watershed and established water quality standards for it in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties," (hereinafter "**Basin Plan**"). See California Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (1995), available at http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

The beneficial uses of these waters include, among others, municipal and domestic supply, agricultural supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the San Gabriel River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." *Id.* at 3-16. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* at 3-11. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-16. The Basin Plan provides that "[t]he pH of bays or estuaries [or inland surface waters] shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." *Id.* at 3-15. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-9. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." *Id.*

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (hereinafter "**BAT**") and best conventional pollutant control technology (hereinafter "**BCT**"). The following benchmarks have been established in EPA's Multi-Sector General Permit for pollutants discharged by THARCO: pH – 6 – 9 s.u., total suspended solids ("**TSS**") of 100 mg/L, oil & grease of 15 mg/L. U.S. EPA, Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2009) (hereinafter "**MSGP**").

II. Alleged Violations of the Clean Water Act and the General Permit.

A. *Discharges in Violation of the Permit not Subjected to BAT/BCT*

THARCO has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facilities' discharge monitoring locations.

THARCO has discharged and continues to discharge storm water with unacceptable levels of and other pollutants in violation of the General Permit. THARCO's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facilities have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin and has thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit. On

October 11, 2012, the Los Nietos Facility measured a pH level of 5.86 s.u. from Los Nietos Outfall 1. This outside of the required pH range in the Basin Plan of 6.5 – 8.5 s.u. CCAT alleges that since the 2009-2010 wet season and continuing through today, THARCO has discharged storm water contaminated with pollutants at levels or observations that exceed or violate the applicable Basin Plan water quality standards for pH.

The following discharges of pollutants from the Facilities have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
10/11/2012	Total Suspended Solids	2200 mg/L	100 mg/L	Los Nietos Outfall 1
12/19/2013	Total Suspended Solids	590 mg/L	100 mg/L	Los Nietos Outfall 1
2/6/2014	Total Suspended Solids	360 mg/L	100 mg/L	Los Nietos Outfall 1
10/11/2012	pH	5.86	6-9 s.u.	Los Nietos Outfall 1
12/19/2013	Total Suspended Solids	190 mg/L	100 mg/L	Painter Outfall 2
2/6/2014	Total Suspended Solids	360 mg/L	100 mg/L	Painter Outfall 3

The information in the above table reflects data gathered from THARCO's self-monitoring during the 2012-2013 and 2013-2014 wet seasons. CCAT alleges that during each of those rainy seasons and continuing through today, THARCO has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

- Total Suspended Solids – 100 mg/L
- pH – 6.0 – 9.0 s.u.

CCAT's investigation, including its review of THARCO analytical results documenting pollutant levels in the Facilities' storm water discharges well in excess of applicable water quality standards and the EPA's benchmark values indicates that THARCO has not implemented BAT and BCT at the Facilities for its discharges of pH and TSS and other pollutants in violation of Effluent Limitation B(3) of the General Permit. THARCO was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facilities opened. Thus, THARCO is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the tables above indicate that the Facilities are discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and

Receiving Water Limitations C(1) and C(2) of the General Permit. CCAT alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since September 5, 2009, and that will occur at the Facilities subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAT alleges that THARCO has discharged storm water containing impermissible levels of pH and TSS in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.¹

These unlawful discharges from the Facilities are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, THARCO is subject to penalties for violations of the General Permit and the Act since September 5, 2009.

B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above-referenced data was obtained from the Facilities’ monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facilities have violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by THARCO is not representative of the quality of the Facilities’ various storm water discharges and that the Facilities’ failed to monitor all qualifying storm water discharges, CCAT alleges that the Facilities’ monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

In addition, CCAT alleges that the Los Nietos Facility failed to sample and analyze storm water discharges from two storm events during the 2012-2013 wet season, and the Painter Facility failed to sample and analyze storm water discharges from two storm events at both outfalls during the 2012-2013 and 2013-2014 wet season. CCAT further alleges that the Los Nietos Facility had unauthorized stormwater discharges at Los Nietos outfall 1 in October-

¹ The rain dates are all the days when an average of 0.1” or more rain fell as measured by a weather station located in Long Beach, approximately 15 miles away from the Facilities. The weather data can be obtained at <http://www.ipm.ucdavis.edu/WEATHER/SITES/losangeles.html> (Last accessed on September 2, 2014).

December and January-March during the 2012-2013 wet season, and the Painter facility had unauthorized stormwater discharges during the April-May 2011-2012 wet season. CCAT further alleges that during the 2011-2012 wet season the Los Nietos Facility did not conduct visual observations for authorized and unauthorized non-storm water discharges during April-June, did not visually observe storm water discharges in April and May, did not record times of observation of stormwater discharges during October, November, December, January, February, and March and did not certify compliance with General Permit. CCAT further alleges that during the 2010-2011 wet season the Painter Facility did not conduct visual observations for authorized and unauthorized non-storm water discharges during April – June and did not observe the times of stormwater discharges during the October – March 2010-2011. CCAT further alleges that during the 2011-2012 wet season the Painter Facility did not report monitoring results and also admitted that BMPs concerning uncovered scrap metal storage were not complied with.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, THARCO is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since September 5, 2009.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant

spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facilities and a description of the BMPs to be implemented at the Facilities that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CCAT's investigation of the conditions at the Facilities as well as THARCO's Annual Reports indicate that THARCO has been operating with an inadequately developed and implemented SWPPP in violation of the requirements set forth above. THARCO has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. THARCO has been in continuous violation of Section A and Provision E(2) of the General Permit every day since September 5, 2009, at the very latest, and will continue to be in violation every day that THARCO fails to prepare, implement, review, and update an effective SWPPP. THARCO is subject to penalties for violations of the Order and the Act occurring since September 5, 2009.

D. Failure to File True and Correct Annual Reports

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, THARCO and its agents, Mark Aguirre and Chris Pierce, inaccurately certified in its Annual Reports that the Facilities were in compliance with the General Permit. Consequently, THARCO has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time THARCO failed to submit a complete or correct report and every time THARCO or its agents falsely purported to comply with the Act. THARCO is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least September 5, 2009.

III. Persons Responsible for the Violations.

CCAT puts THARCO on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCAT puts THARCO on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of CCAT is as follows:

Jane Williams
Executive Director
California Communities Against Toxics
P.O. Box 845
Rosamond, CA 93560
Tel. (661) 510-3412

V. Counsel.

CCAT has retained counsel to represent it in this matter. Please direct all communications to:

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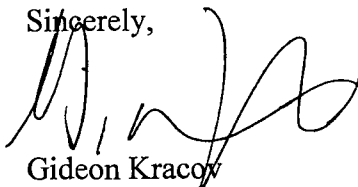
VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects THARCO to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCAT will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAT believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAT intends to file a citizen suit under Section 505(a) of the Act against THARCO and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAT would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAT suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAT does not intend to delay the filing of a complaint in federal court if discussions are

continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Kracov', written over the printed name.

Gideon Kracov
Attorneys for California Communities Against Toxics

SERVICE LIST

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Samuel Unger, Executive Officer
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ATTACHMENT A
Rain Dates, PCA/Tharco, Santa Fe Springs, California

10/13/2009	2/16/2011	12/26/2012
10/14/2009	2/18/2011	12/29/2012
12/7/2009	2/19/2011	1/24/2013
12/11/2009	2/25/2011	1/25/2013
12/12/2009	2/26/2011	2/8/2013
12/13/2009	3/20/2011	2/19/2013
1/13/2010	3/21/2011	3/8/2013
1/14/2010	3/23/2011	5/6/2013
1/17/2010	3/25/2011	5/17/2013
1/18/2010	3/27/2011	12/19/2013
1/19/2010	5/17/2011	1/30/2014
1/20/2010	10/4/2011	2/6/2014
1/21/2010	10/5/2011	2/27/2014
1/22/2010	11/4/2011	2/28/2014
2/5/2010	11/6/2011	3/1/2014
2/6/2010	11/12/2011	4/1/2014
2/15/2010	11/20/2011	4/2/2014
2/19/2010	12/12/2011	4/25/2014
2/23/2010	1/21/2012	
2/27/2010	1/23/2012	
3/6/2010	2/15/2012	
4/5/2010	2/27/2012	
4/12/2010	3/17/2012	
10/6/2010	3/18/2012	
11/20/2010	3/25/2012	
12/10/2010	4/10/2012	
12/17/2010	4/11/2012	
12/18/2010	4/13/2012	
12/19/2010	4/25/2012	
12/20/2010	4/26/2012	
12/21/2010	7/25/2012	
12/22/2010	11/29/2012	
12/23/2010	11/30/2012	
12/24/2010	12/2/2012	
12/26/2010	12/3/2012	
12/27/2010	12/13/2012	
1/30/2011	12/24/2012	